

STATE OF MICHIGAN
COURT OF APPEALS

In re JOHNSON, Minors.

UNPUBLISHED

May 19, 2015

No. 324032

Wayne Circuit Court

Family Division

LC No. 12-506372-NA

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Before: WILDER, P.J., and OWENS and M.J. KELLY, JJ.

PER CURIAM.

In Docket No. 324032, respondent-mother, Danielle Tara Johnson, appeals by right the trial court's order terminating her parental rights to her children JDJ and JGJ pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions supporting jurisdiction have not been rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that children will be harmed if returned to parent). In Docket No. 324033, respondent-father, Antonio Johnson, appeals by right the same order, which also terminated his parental rights to JGJ pursuant to these same provisions. We affirm in both appeals.

I

In April 2012, the trial court authorized a petition seeking temporary custody of the then-18-month-old JDJ. The petition alleged that respondent-mother medically neglected the child in 2011 and had instability in housing, as well as domestic violence and mental health issues. The petition also noted that prior treatment services offered by Children's Protective Services were unsuccessful. Respondent-mother admitted the allegations and the trial court assumed jurisdiction over the minor child. A subsequent Clinic for Child Study evaluation revealed that respondent-mother had a history of habitual marijuana use, and she exhibited poor judgment and insight. At disposition, the court ordered respondent-mother to comply with a treatment plan and have supervised visitation. Her treatment plan required that she participate in evaluations,

parenting classes, and individual therapy, and that she obtain suitable housing and income. A subsequent evaluation revealed that respondent-mother engaged in marijuana use, and substance abuse therapy and random drug screens were added to the treatment plan.

Respondent-mother gave birth to JGJ in September 2012. The trial court assumed jurisdiction over JGJ in October 2012 because respondent-mother had not yet completed the treatment plan in place concerning JDJ and was without suitable housing. Respondent-father was the putative father of JGJ, and he was incarcerated at the time of JGJ's birth. On October 9, 2012, respondent-mother admitted she did not have suitable housing, that she was not taking her medication for her mental health condition, and that she had not completed her existing treatment plan. At subsequent review hearings occurring in late 2012 and throughout 2013, the parties noted that respondent-mother had made steady progress through her treatment plan and her visits had progressed to unsupervised. Respondent-father remained incarcerated but claims that at some point he began communicating with the foster care worker by letter. DNA testing in September 2013 established that he was the biological father of JGJ and, in October 2013, the court ordered him to establish paternity within 14 days.

At the February 2014 combined review and permanency planning hearing, the trial court was informed that respondent-mother was not complying with her services. She was using drugs and had no housing. Respondent-father was still incarcerated and had not yet established paternity. The trial court ordered that respondent-mother's visits be supervised and ordered the agency to file a petition to terminate both respondents' parental rights. Shortly thereafter, respondent-father signed an affidavit of paternity and was given a treatment plan, in which he was required to undergo psychological/psychiatric assessments and parenting classes, and attempt to remedy his problems involving substance abuse, housing, and lack of income.

On March 31, 2014, the trial court authorized a petition seeking termination of both respondents' parental rights. The petition alleged that respondent-mother had failed to fully comply with, or benefit from, the treatment services offered. Further, she had mental health and substance abuse issues and failed to obtain suitable housing or income. The petition also alleged that respondent-father would be incarcerated until 2019. On May 1, 2014, the trial court ruled that respondent-father was the legal father of JGJ and appointed a lawyer to represent him.

A hearing on the termination petition started later that month. Respondent-father participated by speakerphone and video from the correctional facility in which he was incarcerated. The evidence established that respondent-mother never resolved her housing issue. Neighborhood Services Organization was currently assisting her with obtaining housing, but she had not acquired suitable housing at the time of the termination hearing. Respondent-mother had moved over 20 times and lived in at least four different places, and she also was in jail from November 25, 2013, through December 10, 2013. The foster care worker opined that respondent-mother was unable to provide a safe, suitable, and stable home for her children. Additionally, the evidence established that respondent had mental health issues, for which she was prescribed medication, but she could not take it because she was pregnant again. According to the foster care worker, respondent-mother had a history of poor interaction with people, and because of her anger issues, she commonly found herself in conflicts with the people with whom she lived. Evidence admitted at the hearing also established that respondent-mother continued to use marijuana throughout her treatment period. While her last three drug tests returned negative

for drugs, she had a positive drug screen in April 2014, and missed 27 screens from late 2013 to May 2014 which she admitted would have been positive. She even used marijuana while pregnant with JGJ. The foster care worker assigned to respondent-mother's case did not believe that respondent-mother understood the need to stop using illegal drugs. Further, although her therapist indicated respondent-mother was making progress, she nonetheless felt that respondent-mother was not ready for reunification because she needed to establish she was not using drugs and respondent-mother's therapist believed that marijuana use would impact respondent's ability to parent her children.

Respondent-father testified by way of a live video feed at the hearing. He stated that he was incarcerated at the Chippewa Correctional Facility, but had applied to enter a "boot camp" program, which would last approximately 90 days and, upon completion, would allow him an early release. Respondent-father further admitted that he had not taken part in any of the treatment programs or parenting classes required by his court-ordered treatment plan because none were offered by the Michigan Department of Corrections. He testified that he was very interested in parenting JGJ, and he further stated that his mother and sister would both be interested in taking custody of JGJ until his release. However, assuming that he would not be eligible for the "boot camp" program, respondent-father's earliest release date would be in 2019.

Following the proofs, the trial court found that there were statutory grounds to terminate respondent-mother's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), on the grounds that she had not complied with her treatment plan and had ongoing issues with substance abuse, mental health, and the ability to maintain housing.¹ Additionally, the trial court noted that the children had been in foster care for a long time. Respondent-father's parental rights were terminated under the same subsections because he had never seen his child due to his incarceration, and the trial court found that the child would be deprived of permanency if respondent's parental rights were not terminated, given that respondent's earliest possible release date was 2019.

Finally, the trial court determined that termination was in the children's best interests. Though respondent-mother loved her children and was bonded to them, the trial court found that she still had anger issues, and the children's current foster parents expressed a willingness to adopt the children and provide them a safe, permanent home.

II

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). The trial court's factual findings are reviewed for clear error; a finding of fact is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court's determination

¹ The parental rights of Danny Gray, JDJ's putative father, were also terminated by this order, and he has not appealed.

regarding the existence of statutory grounds for termination is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich at 152.

III

In Docket No. 324032, respondent-mother first argues that the trial court erred in finding that the statutory grounds for termination of her parental rights were established by clear and convincing evidence. We disagree. Termination was based on MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which permit termination of parental rights under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Only one statutory ground need be established to support termination of respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Regarding the trial court's termination pursuant to subsection (c)(i), the issues that led the court to exercise jurisdiction over JDJ in April 2012 were medical neglect, mental health issues, failure to follow through on services offered, and lack of suitable housing, all of which created a risk of harm to the minor child. The trial court assumed jurisdiction over JGJ in October 2012

because respondent-mother still had no suitable housing, still exhibited mental health issues, and she had not yet completed her treatment plan.

The evidence supported the trial court's findings that respondent-mother never resolved her housing issue. Despite regular assistance from Neighborhood Services Organization, and assistance from and discussions with foster care workers about the need for her to have stability and housing, respondent-mother never established suitable housing while this case was pending, and had not acquired suitable housing at the time of the termination hearing. The trial court properly credited the opinion testimony of the foster care worker that respondent-mother was unable to provide a safe, suitable, and stable home for her children, and did not clearly err in finding that respondent's housing issues would not be resolved within a reasonable time.

The trial court's conclusion that respondent's mental health issues were not fully resolved at the time of the termination hearing and would not be resolved within a reasonable time was also not clearly erroneous. The evidence supported the trial court's finding that respondent-mother had mental health issues that could not be properly medicated due to her pregnancy, that she had a history of poor interaction with people, which contributed to her housing issues, and that she had made threats to workers and the foster parent. The trial court was warranted in finding credible the foster care worker's conclusion that respondent-mother had not benefited from therapy she had to address anger.

After the court had taken jurisdiction over JDJ, it was discovered that respondent-mother had a history of marijuana use, and the court ordered that she have substance abuse therapy and participate in random drug screens to address that. Respondent-mother was currently attending substance abuse therapy and her therapist indicated that she was making progress because she attended, engaged, and actively participated. Respondent-mother told her therapist at some point after March 2014 that she intended to stop using drugs. At the May 29, 2014 hearing, respondent-mother claimed she no longer smoked marijuana, and her last three screens were clean.

However, respondent-mother had tested positive for marijuana throughout this case, and acknowledged skipping 27 required drug screens because she knew that the screens would have returned positive for marijuana. Additionally, respondent-mother's therapist believed that respondent-mother's marijuana use would impact her ability to parent her children. Respondent-mother had not established suitable housing and was never able to do so during the lengthy period of time this case was pending. Further, respondent-mother's recent progress in the area of substance abuse belied the fact that she had used drugs recently and throughout this case. The case had been pending for more than two years, and respondent-mother had been given a reasonable opportunity to rectify her issues. Given these circumstances, the trial court did not clearly err in finding no reasonable likelihood that respondent-mother would be able to provide proper care and custody to her children within a reasonable time considering the children's ages, MCL 712A.19b(c)(g), and that there was a reasonable likelihood, based on respondent-mother's conduct, that her children would be harmed if returned to her care, *id.* at § (j). Further, these were the same conditions that led to the adjudication, and there was no indication that they would be rectified in a reasonable time. *Id.* at § (c)(i), (c)(ii). Therefore, the trial court did not err in finding that petitioner established the necessary statutory grounds to terminate respondent-mother's parental rights.

IV

In Docket No. 324032, respondent-mother next argues that the trial court erred in concluding that termination of her parental rights was in the children's best interests. We disagree.

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's decision regarding the children's best interests is reviewed for clear error. *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich at 152.

In deciding a child's best interests, the trial court may consider the child's bond to his or her parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court should weigh all the evidence available to determine the child's best interests. *In re White*, 303 Mich App at 713.

In the instant case, the trial court noted that respondent-mother loved her children, was bonded to them and regularly visited them, and that she had recently submitted negative drugs screens. However, the trial court concluded that the length of time the children were in foster care, the fact that respondent-mother still had anger issues, no housing and continued substance abuse and mental health difficulties, and that the foster parents were willing to adopt and therefore would provide the children with permanency and stability, weighed in favor of the conclusion that termination was in the children's best interests.

We find no clear error in the trial court's finding that a preponderance of the evidence established that termination of respondent-mother's parental rights was in her children's best interests.

V

In Docket No. 324033, respondent-father contends that termination of his parental rights was improper because he had only a limited time to work on his treatment plan and the foster care worker failed to assist him with it. Respondent-father contends that termination was not proper under subsection (3)(c)(ii), pointing out that this provision requires a finding that the parent "has been given a reasonable opportunity to rectify the conditions." Even if respondent-father's assertion on appeal is correct with regard to subsection (3)(c)(ii), his argument is confined to the trial court's ruling under that subsection. Respondent-father does not address on appeal the trial court's rulings under subsections (c)(i), (g), or (j), the three other provisions under which his parental rights were terminated. Thus, respondent-father's failure to advance any argument directed at subsections (c)(i), (g), or (j) precludes appellate relief, because "[o]nly one statutory ground for termination need be established." *In re Olive/Metts Minors*, 297 Mich

App 35, 41; 823 NW2d 144 (2012). Where a respondent does not challenge the trial court's determination with respect to one or more of several statutory grounds, this Court may assume that the trial court did not clearly err in finding that the unchallenged grounds were proven by clear and convincing evidence. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1999), overruled in part on other grounds by *In re Trejo*, 462 Mich at 353. Accordingly, respondent-father has not shown any error requiring reversal of the trial court's order terminating his parental rights to JGJ.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Donald S. Owens
/s/ Michael J. Kelly